

1                                   **Part VI. Appeals in Noncapital Criminal Cases**  
2

3   **Rule 30. Taking the appeal**  
4

5   **(a) Notice of appeal**  
6

7           (1) To appeal from a judgment or appealable order of the superior court  
8               in a felony case—other than a judgment imposing a sentence of  
9               death—the defendant or the People must file a notice of appeal in  
10              that superior court.

11  
12          (2) As used in (1), “felony case” includes a case in which the defendant  
13               is charged with:

14  
15               (A) a felony;

16  
17               (B) a felony and a misdemeanor or infraction;

18  
19               (C) a felony, but the defendant is convicted of a misdemeanor or  
20               infraction as a lesser included offense; or

21  
22               (D) a crime punishable as a felony or a misdemeanor, and the  
23               judgment imposes a misdemeanor punishment.  
24

25          (3) If the defendant appeals, the defendant or the defendant’s attorney  
26               must sign the notice of appeal. If the People appeal, the attorney for  
27               the People must sign the notice.  
28

29          (4) The notice of appeal must be liberally construed, and is sufficient if  
30               it identifies the particular judgment or order being appealed. The  
31               notice need not specify the court to which the appeal is taken; the  
32               appeal will be treated as taken to the Court of Appeal for the district  
33               in which the superior court is located.  
34

35   **(b) Appeal after plea of guilty or nolo contendere**  
36

37          (1) Except as provided in (2), to appeal from a superior court judgment  
38               after a plea of guilty or nolo contendere or after an admission of  
39               probation violation a defendant must file in that superior court, with  
40               the notice of appeal required by (a), the statement required by Penal  
41               Code section 1237.5 for issuance of a certificate of probable cause.  
42

- 1 (2) A defendant need not comply with (1) if the notice of appeal states  
2 that the appeal is based solely on:  
3  
4 (A) the denial of a motion to suppress evidence under Penal Code  
5 section 1538.5, or  
6  
7 (B) grounds that arose after entry of the plea that do not affect the  
8 plea's validity.  
9  
10 (3) Within 20 days after the defendant files a statement under (1), the  
11 superior court must sign and file either a certificate of probable  
12 cause or an order denying the certificate.  
13  
14 (4) The appeal will not be operative as to any ground for which a  
15 certificate is denied.  
16  
17 (5) The time to prepare, certify, and file the record, or to file an agreed  
18 or settled statement, begins when the court files the certificate.  
19  
20 (c) **Notification of the appeal**  
21  
22 (1) The superior court clerk must promptly mail a notification of the  
23 filing of the notice of appeal and of any certificate or order under  
24 (b)(3) to the attorney of record for each party, to any unrepresented  
25 defendant, to the reviewing court clerk, to each court reporter, and to  
26 any lead reporter or reporting supervisor.  
27  
28 (2) The notification must show the date it was mailed, the number and  
29 title of the case, and the date the notice of appeal was filed. If the  
30 information is available, the notification must also include:  
31  
32 (A) the name, address, telephone number, and California State  
33 Bar number of each attorney of record in the case;  
34  
35 (B) the name of the party each attorney represented in the  
36 superior court; and  
37  
38 (C) the name, address, and telephone number of any  
39 unrepresented defendant.  
40  
41 (3) The notification to the reviewing court clerk must also include a  
42 copy of the sequential list of reporters made under rule 980.4 and  
43 any certificate of probable cause filed under (b).

- 1  
2 (4) A copy of the notice of appeal is sufficient notification under (1) if  
3 the required information is on the copy or is added by the superior  
4 court clerk.  
5  
6 (5) The mailing of a notification under (1) is a sufficient performance of  
7 the clerk's duty despite the discharge, disqualification, suspension,  
8 disbarment, or death of the attorney.  
9  
10 (6) Failure to comply with any provision of this subdivision does not  
11 affect the validity of the notice of appeal.  
12

13 **Advisory Committee Comment**  
14

15 **Subdivision (a).** Revised rule 30(a) collects related provisions of former rule 31(a) and  
16 (b).

17 Revised subdivision (a)(1) and (2) clarifies the applicability of this Part: it governs  
18 appeals from judgments (except judgments of death) or appealable orders in any *felony case*.  
19 Under the definition of *felony case* in revised subdivision (a)(2), this Part applies not only when  
20 the defendant is simply charged with felony, but also when the defendant is charged with both a  
21 felony and a misdemeanor or infraction (see Pen. Code, § 691, subd. (f)), even if the defendant is  
22 convicted of only the misdemeanor or infraction; when the defendant is charged with a felony but  
23 is convicted of a misdemeanor or infraction as a lesser included offense; and when the defendant  
24 is charged with a crime punishable either as a felony or as a misdemeanor or infraction, and is  
25 punished as a misdemeanant.  
26

27 If, however, the defendant is charged only with a misdemeanor or infraction (see Pen.  
28 Code, § 691, subd. (g).), an appeal from the ensuing judgment or appealable order is governed by  
29 rules 180 et seq.  
30

31 **Subdivision (b).** Revised rule 30(b) is former rule 31(d). Revised subdivision (b)(1)  
32 restates the first sentence of former rule 31(d), first paragraph, with two substantive changes.  
33 First, the revised subdivision fills a gap by extending the rule to appeals after an admission of  
34 probation violation, as provided by the statute. (See Pen. Code, § 1237.5.)  
35

36 Second, under the former rule the statement required by Penal Code section 1237.5(a) for  
37 issuance of a certificate of probable cause served as a *substitute* for a notice of appeal; under the  
38 revised rule the defendant is required to file a notice of appeal *and* that statement. Requiring a  
39 notice of appeal in all cases simplifies the rule, permits compliance with the signature  
40 requirement of revised subdivision (a)(2), ensures that the defendant's intent to appeal will not be  
41 misunderstood, and makes the provision consistent with the rule in civil appeals and with current  
42 practice as exemplified in the Judicial Council form governing criminal appeals.  
43

44 Revised subdivision (b)(4) fills a gap by clarifying that the denial of a certificate of  
45 probable cause as to one ground of an appeal renders the appeal inoperative as to that ground  
46 alone; the appeal remains operative as to any ground for which a certificate is granted and any  
47 ground for which a certificate is not required under (2).  
48

1           **Subdivision (c).** Revised rule 30(c) collects related provisions of former rule 31(a) and  
2 (c).  
3

4           The third paragraph of former rule 31(a) directed each attorney filing on a defendant's  
5 behalf—or assisting a defendant in filing—a notice of appeal, to serve a copy of the notice on  
6 “the court reporter, lead reporter, or reporting supervisor.” In a substantive change, revised rule  
7 30(c)(1) places this duty instead on the superior court clerk, who is best situated to know the  
8 identities of the reporters and who is charged in any event with sending a notification of the filing  
9 of the notice of appeal to the reviewing court (together with a copy of the sequential list of  
10 reporters under rule 980.4) and to the attorneys for the parties.  
11

12           Each provision of revised rule 30(c)(2)(A)-(C), (4), and (5), fills a gap and incorporates  
13 wording of revised rule 1(d)(2)(A)-(C), (3), and (4), respectively.

1 **Rule 30.1. Time to appeal**

2  
3 **(a) Normal time**

4  
5 Unless otherwise provided by law, a notice of appeal must be filed within 60  
6 days after the rendition of the judgment or the making of the order being  
7 appealed.  
8

9 **(b) Premature notice of appeal**

10  
11 A notice of appeal filed before the judgment is rendered or the order is made  
12 is premature, but the reviewing court may treat the notice as filed  
13 immediately after the rendition of judgment or the making of the order.  
14

15 **(c) Late notice of appeal**

16  
17 The superior court clerk must mark a late notice of appeal “Received [date]  
18 but not filed” and notify the party that the notice was not filed because it was  
19 late.  
20

21 **(d) Receipt by mail from custodial institution**

22  
23 If the superior court clerk receives a notice of appeal by mail from a custodial  
24 institution after the period specified in (a) has expired but the envelope shows  
25 that the notice was mailed or delivered to custodial officials for mailing  
26 within the period specified in (a), the notice is deemed timely. The clerk must  
27 retain in the case file the envelope in which the notice was received.  
28

29 **Advisory Committee Comment**

30  
31 Revised rule 30.1 is derived from provisions of former rule 31.  
32

33 **Subdivisions (a)-(c).** Revised subdivisions (a), (b), and (c) are the first two paragraphs  
34 of former rule 31(a). Because revised rule 30(b)(1) requires a defendant wanting to appeal from a  
35 judgment after a plea of guilty or nolo contendere to file a notice of appeal as in any other  
36 criminal case, the special provision of former rule 31(d) prescribing the time to appeal after such  
37 a plea is deleted as unnecessary.  
38

39 **Subdivision (d).** Revised subdivision (d) is former rule 31(e). The subdivision is not  
40 intended to limit a defendant’s appeal rights under the case law of constructive filing. (See, e.g.,  
41 *In re Jordan* (1992) 4 Cal.4th 116; *In re Benoit* (1973) 10 Cal.3d 72.)  
42

1 **Rule 30.2. Stay of execution and bail on appeal**

2  
3 **(a) Stay of execution**

4  
5 An application to a reviewing court for stay of execution pending appeal  
6 from a judgment of conviction or order granting probation must include a  
7 showing that the defendant properly applied to the superior court for a stay  
8 and that court unjustifiably denied the application. The reviewing court  
9 may grant a stay pending its ruling on the application. The reviewing  
10 court must notify the superior court under rule 56(g) of any stay that it  
11 grants.  
12

13 **(b) Bail**

14  
15 An application to a reviewing court for bail or to reduce bail pending appeal  
16 must be served on the district attorney and the Attorney General and must  
17 include a showing that the defendant properly applied to the superior court  
18 for bail or to reduce bail and that court unjustifiably denied the application.  
19 The reviewing court may grant or reduce bail pending its ruling on the  
20 application.  
21

22 **Advisory Committee Comment**

23  
24 Revised rule 30.2 is former rule 32.  
25

26 **Subdivision (a).** Revised subdivision (a) fills a gap by recognizing that a reviewing court  
27 may stay execution of an order granting probation pending appeal. (See Pen. Code, § 1243.) The  
28 third sentence of the revised subdivision resolves an ambiguity in the former rule by requiring the  
29 reviewing court to notify the superior court under rule 56(g) when it grants either (i) a stay to  
30 preserve the status quo pending its ruling on a stay application or (ii) the stay requested by that  
31 application.  
32

33 **Subdivision (b).** Revised subdivision (b) fills a gap by recognizing that a reviewing court  
34 may grant bail or reduction of bail pending its ruling on an application for that relief. (See, e.g.,  
35 *In re Fishman* (1952) 109 Cal.App.2d 632, 633; *In re Keddy* (1951) 105 Cal.App.2d 215, 217.)  
36

37 An order of the Court of Appeal denying bail or reduction of bail is final on filing. (See  
38 revised rule 24(b)(2)(C).)

1 **Rule 30.3. Abandoning the appeal**

2  
3 **(a) How to abandon**

4  
5 An appellant may abandon the appeal at any time by filing an abandonment  
6 of the appeal signed by the appellant or the appellant's attorney of record.  
7

8 **(b) Where to file; effect of filing**

- 9  
10 (1) If the record has not been filed in the reviewing court, the appellant  
11 must file the abandonment in the superior court. The filing effects a  
12 dismissal of the appeal and restores the superior court's jurisdiction.  
13  
14 (2) If the record has been filed in the reviewing court, the appellant must  
15 file the abandonment in that court. The reviewing court may dismiss  
16 the appeal and direct immediate issuance of the remittitur.  
17

18 **(c) Clerk's duties**

- 19  
20 (1) The clerk of the court in which the appellant files the abandonment  
21 must immediately notify the adverse party of the filing or of the  
22 order of dismissal. If the defendant abandons the appeal, the clerk  
23 must notify both the district attorney and the Attorney General.  
24  
25 (2) If the appellant files the abandonment in the superior court, the clerk  
26 must immediately notify the reviewing court.  
27  
28 (3) The clerk must promptly notify the reporter if the appeal is  
29 abandoned before the reporter has filed the transcript.  
30

31 **Advisory Committee Comment**

32  
33 Revised rule 30.3 is former rule 38.  
34

35 **Subdivision (a).** The former rule provided that an appellant may *dismiss* an appeal by  
36 filing an *abandonment* of it; revised rule 30.3(a) provides instead that an appellant may *abandon*  
37 an appeal by filing such an abandonment. The change is not substantive, and is intended to  
38 simplify the rule and to clarify its operation by reserving the term "dismiss" for the discretionary  
39 act of a reviewing court in response to an abandonment filed in that court (see revised subd.  
40 (b)(2)).  
41

42 **Subdivision (c).** Filling a gap, revised rule 30.3(c)(2) is intended to ensure that the  
43 reviewing court is promptly informed when an appellant abandons an appeal before the record  
44 has been filed in that court.

1 **Rule 31. Normal record**

2  
3 **(a) Contents**

4  
5 If the defendant appeals from a judgment of conviction, or if the People  
6 appeal from an order granting a new trial, the record must contain a clerk's  
7 transcript and a reporter's transcript, which together constitute the normal  
8 record.  
9

10 **(b) Clerk's transcript**

11  
12 The clerk's transcript must contain:

- 13  
14 (1) the accusatory pleading and any amendment;  
15  
16 (2) any demurrer or other plea;  
17  
18 (3) all court minutes;  
19  
20 (4) all instructions submitted in writing, indicating on each the party  
21 requesting it;  
22  
23 (5) any written communication between the court and the jury or any  
24 individual juror;  
25  
26 (6) any verdict;  
27  
28 (7) any written opinion of the court;  
29  
30 (8) the judgment or order appealed from and any abstract of judgment or  
31 commitment;  
32  
33 (9) any motion for new trial, with supporting and opposing memoranda and  
34 affidavits;  
35  
36 (10) the notice of appeal and any certificate of probable cause filed under rule  
37 30(b);  
38  
39 (11) any transcript of a sound or sound-and-video recording furnished to the  
40 jury or tendered to the court under rule 203.5;  
41  
42 (12) any request for additional record and any order on the request;



1 (13) any stipulation for a partial record or agreed statement, or any order for a  
2 settled statement;

3  
4 (14) if the appellant is the defendant, the clerk's transcript must also contain:

5  
6 (A) the reporter's transcript of any preliminary examination or grand  
7 jury hearing;

8  
9 (B) any search warrant and return;

10  
11 (C) any written defense motion denied in whole or in part, with  
12 supporting and opposing memoranda and affidavits;

13  
14 (D) any certified record of a court or the Department of Corrections  
15 admitted in evidence to prove a prior conviction or prison term;  
16 and

17  
18 (E) the probation officer's report.  
19

20 **(c) Reporter's transcript**

21  
22 The reporter's transcript must contain:

23  
24 (1) the oral proceedings on the entry of any plea other than a not guilty  
25 plea;

26  
27 (2) the oral proceedings on any motion in limine;

28  
29 (3) the oral proceedings at trial, but excluding the voir dire examination of  
30 jurors and any opening statement;

31  
32 (4) all instructions given orally;

33  
34 (5) any oral communication between the court and the jury or any  
35 individual juror.

36  
37 (6) any oral opinion of the court;

38  
39 (7) the oral proceedings at sentencing, granting or denial of probation, or  
40 other dispositional hearing;

41  
42 (8) the oral proceedings on any motion for new trial;

1 (9) if the appellant is the defendant, the reporter's transcript must also  
2 contain:

3  
4 (A) the oral proceedings on any motion under Penal Code section  
5 1538.5 denied in whole or in part;

6  
7 (B) the closing arguments; and

8  
9 (C) any comment on the evidence by the court to the jury.  
10

11 **(d) Limited normal record in certain appeals**  
12

13 If the People appeal from a judgment on a demurrer to the accusatory  
14 pleading, or if the defendant or the People appeal from an appealable order  
15 other than a ruling on a motion for new trial, the normal record is composed  
16 of a reporter's transcript of any oral proceedings incident to the judgment or  
17 order being appealed and a clerk's transcript containing:

18  
19 (1) the accusatory pleading and any amendment;

20  
21 (2) any demurrer or other plea;

22  
23 (3) any motion or notice of motion granted or denied by the order appealed  
24 from, with supporting or opposing memoranda and affidavits;

25  
26 (4) the judgment or order appealed from and any abstract of judgment or  
27 commitment;

28  
29 (5) any court minutes relating to the judgment or order appealed from; and

30  
31 (6) the notice of appeal.  
32

33 **(e) Stipulation for partial transcript**  
34

35 If counsel for the defendant and the People stipulate in writing before the  
36 record is certified that any part of the record is not required for proper  
37 determination of the appeal, that part must not be prepared or sent to the  
38 reviewing court.  
39

40 **(f) Form of record**  
41

42 The clerk's transcript and the reporter's transcript must comply with rule 9.  
43

1 **Advisory Committee Comment**

2  
3 Revised rule 31 combines former rules 33(a) and 34.  
4

5 **Subdivision (c).** Former rule 33(a)(2) provided that oral communications between the  
6 court and the jury after the giving of the instructions were included in the normal reporter's  
7 transcript only in an appeal by the defendant; revised rule 31(c)(5) extends that provision  
8 generally to an appeal by either party. Written communications between the court and the jury  
9 are included in the normal clerk's transcript in an appeal by either party (see revised subd.(b)(5)),  
10 and no reason appears to perpetuate the distinction.  
11

12 **Subdivision (d).** Revised rule 31(d) is former rule 34.  
13

14 **Subdivision (e).** Revised rule 31(e) is former rule 35(f).  
15

16 **Subdivision (f).** Revised rule 31(f) fills a gap and reflects longstanding practice.  
17

18 **Former rules 33(a)(3) and 34(3).** Former rules 33(a)(3) and 34(3) provided for the  
19 transmission of certain exhibits to the reviewing court. Revised rule 33.1 now governs all matters  
20 relating to the transmission of exhibits.  
21

1 **Rule 31.1. Additions to normal record**

2  
3 **(a) Appeal by the People**

4  
5 The People, as appellant, may apply to the superior court for inclusion in  
6 the record of any item that would be part of the normal record in a  
7 defendant's appeal.  
8

9 **(b) Request by either party**

10  
11 Either the People or the defendant may apply to the superior court for  
12 inclusion in the record of any of the following items:  
13

14 (2) in the clerk's transcript: any defense motion granted in whole or in  
15 part or any motion by the People, with supporting and opposing  
16 memoranda and affidavits;  
17

18 (3) in the reporter's transcript:  
19

20 (A) the voir dire examination of jurors;  
21

22 (B) any opening statement; and  
23

24 (C) the oral proceedings on motions other than those listed in  
25 rule 31(c).  
26

27 **(c) Application**

28  
29 (1) An application for additional record must describe the material to be  
30 included and explain how it may be useful in the appeal.  
31

32 (2) The application must be filed in the superior court with the notice of  
33 appeal or as soon thereafter as possible, and will be treated as denied  
34 if it is filed after the record is sent to the reviewing court.  
35

36 (3) The clerk must immediately present the application to the trial judge  
37 and, if appropriate, notify the reporter.  
38

39 **(d) Order**

40  
41 (1) Within five days after the application is filed, the judge must order  
42 the record to include as much of the additional material as the judge  
43 finds proper to fully present the points raised by the applicant.

1 Denial of the application does not preclude a motion in the  
2 reviewing court for augmentation under rule 12.

- 3  
4 (2) If the judge does not rule on the application within the time  
5 prescribed by (1), the requested material—other than exhibits—must  
6 be included in the clerk’s transcript or the reporter’s transcript  
7 without a court order.  
8

9 **Advisory Committee Comment**

10  
11 Revised rule 31.1 is former rule 33(b).  
12

13 Former rule 33(b) described the application for additional record as both an “application”  
14 and a “request” for an order. For internal consistency and consistency with the style of these  
15 rules, revised rule 31.1 uses only the term “application.” The change is not substantive.  
16

17 Former rule 33(b)(3) provided for the transmission to the reviewing court of exhibits not  
18 requested by that court. Revised rule 33.1 now governs all matters relating to the transmission of  
19 exhibits.

1 **Rule 31.2. Sealed records**

2  
3 **(a) *Marsden* hearing**

- 4  
5 (1) The reporter's transcript of any hearing held under *People v. Marsden*  
6 (1970) 2 Cal.3d 118 must be sealed. The chronological index to the  
7 reporter's transcript must include the *Marsden* hearing but describe it as  
8 "SEALED" or the equivalent.  
9  
10 (2) The superior court clerk must send the original and two copies of the  
11 sealed transcript to the reviewing court with the record.  
12  
13 (3) The reviewing court clerk must send a copy of the sealed transcript to  
14 the defendant's appellate counsel when counsel is appointed or, if  
15 counsel is retained, when counsel has appeared in the case.  
16  
17 (4) If the defendant raises a *Marsden* issue in the opening brief, the  
18 reviewing court clerk must send a copy of the sealed transcript to the  
19 People on written request, unless the defendant has served and filed  
20 with the brief a notice that the transcript contains confidential material  
21 not relevant to the issues on appeal.  
22  
23 (5) If the defendant serves and files a notice under (4), the People may  
24 move to obtain a copy of any relevant portion of the sealed transcript.  
25

26 **(b) Other in-camera proceedings**

- 27  
28 (1) Any party may apply to the superior court for an order that the record  
29 include:  
30  
31 (A) a sealed, separately paginated reporter's transcript of any in-  
32 camera proceeding at which a party was not allowed to be  
33 represented; and  
34  
35 (B) any item that the trial court withheld from a party on the ground it  
36 was confidential.  
37  
38 (2) The application and any ruling under (1) must comply with rule 31.1.  
39  
40 (3) If the court grants the application, it may order the reporter who  
41 attended the in-camera proceeding to personally prepare the transcript.  
42 The chronological index to the reporter's transcript must include the  
43 proceeding but list it as "SEALED" or the equivalent.

- 1  
2 (4) The superior court clerk must send the transcript of the in-camera  
3 proceeding or the confidential item to the reviewing court in a sealed  
4 envelope labeled “CONFIDENTIAL—MAY NOT BE EXAMINED  
5 WITHOUT COURT ORDER.” The reviewing court clerk must file the  
6 envelope and store it separately from the remainder of the record.  
7  
8 (5) Unless the reviewing court orders otherwise, material sealed under (4)  
9 may be examined only by a reviewing court justice personally, but  
10 parties and their attorneys who had access to the material in the trial  
11 court may also examine it.  
12

13 (c) **Omissions**  
14

15 If at any time the superior court clerk or the reporter learns that the record  
16 omits material that any rule requires to be included and this rule requires to  
17 be sealed:  
18

- 19 (1) the clerk and the reporter must comply with rule 32.1(b), and  
20  
21 (2) the clerk must comply with the provisions of this rule requiring sealing  
22 and prescribing which party’s counsel, if any, must receive a copy of  
23 sealed material.  
24

25 **Advisory Committee Comment**  
26

27 Revised rule 31.2 is former rule 33.5.  
28

29 **Subdivision (b).** Former rule 33.5(b) authorized a party to seek an order adding  
30 confidential materials to the record by means of a “request” to the court. For consistency with the  
31 style of these rules, revised rule 31.2(b) substitutes the term “application.” The change is not  
32 substantive.  
33

34 Former rule 33.5(b)(2) authorized adding confidential “written materials” to the record;  
35 filling a gap, revised rule 31.2(b)(1)(B) substitutes the broader phrase “any item” in order to  
36 include such nonwritten materials as photographic exhibits.

1 **Rule 31.3. Juror-identifying information**

2  
3 **(a) Applicability**

4  
5 A clerk's transcript, reporter's transcript, or any other document in the  
6 record that contains juror-identifying information must comply with this  
7 rule.  
8

9 **(b) Juror names, addresses, and telephone numbers**

10  
11 (1) The names of trial jurors and alternates sworn to hear the case must  
12 be deleted from all documents, and an identifying number must be  
13 substituted wherever a juror's name appears. The superior court  
14 clerk must prepare and keep under seal in the case file a table  
15 correlating the jurors' names with their identifying numbers. The  
16 clerk and the reporter must use the table in preparing all transcripts  
17 or other documents.  
18

19 (2) The addresses and telephone numbers of trial jurors and alternates  
20 sworn to hear the case must be deleted from all documents.  
21

22 **(c) Potential jurors**

23  
24 Information identifying potential jurors called but not sworn as trial jurors  
25 or alternates must not be sealed unless otherwise ordered under Code of  
26 Civil Procedure section 237(a)(1).  
27

28 **Advisory Committee Comment**

29 Revised rule 31.2 is former rule 33.6. The rule implements Code of Civil Procedure  
30 section 237.  
31



1 **Rule 32. Preparing, certifying, and sending the record**

2  
3 **(a) Time to prepare**

- 4
- 5 (1) The trial judge must order the reporter and the clerk to begin  
6 preparing the record immediately after a verdict or finding of guilt of  
7 a felony is announced following a trial on the merits, unless the  
8 judge determines that an appeal is unlikely under (2).  
9
- 10 (2) In determining the likelihood of an appeal, the judge must consider  
11 the facts of the case and that an appeal is likely if the defendant has  
12 been convicted of a crime for which probation is prohibited or is  
13 prohibited except in unusual cases, or the trial involved a contested  
14 question of law important to the outcome.  
15
- 16 (3) A determination under (2) is an administrative decision intended to  
17 further the efficient operation of the court and not intended to affect  
18 any substantive or procedural right of the defendant or the People.  
19 The determination cannot be cited to prove or disprove any legal or  
20 factual issue in the case and is not reviewable by appeal or writ.  
21

22 **(b) Clerk's transcript**

- 23
- 24 (1) Within 20 days after the notice of appeal is filed, the clerk must  
25 complete preparation of an original and two copies of the clerk's  
26 transcript.  
27
- 28 (2) On request, the clerk must prepare an extra copy for the district  
29 attorney.  
30
- 31 (3) If there is more than one appealing defendant, the clerk must prepare  
32 an extra copy for each additional appealing defendant represented by  
33 separate counsel.  
34
- 35 (4) The clerk must certify as correct the original and all copies of the  
36 clerk's transcript.  
37

38 **(c) Reporter's transcript**

- 39
- 40 (1) Except as provided in (a), the reporter must begin preparing the  
41 reporter's transcript immediately on being notified by the clerk  
42 under rule 30(c)(1) that the notice of appeal has been filed.  
43

- 1 (2) The reporter must prepare an original and the same number of copies  
2 of the reporter's transcript as (b) requires of the clerk's transcript,  
3 and must certify each as correct.  
4  
5 (3) The reporter must deliver the original and all copies to the superior  
6 court clerk as soon as they are certified, but no later than 20 days  
7 after the notice of appeal is filed.  
8  
9 (4) Any portion of the transcript transcribed during trial must not be  
10 retyped unless necessary to correct errors, and must be repaginated  
11 and bound with any portion of the transcript not previously  
12 transcribed. Any additional copies needed must not be retyped but  
13 prepared by photocopying or equivalent process.  
14  
15 (5) In a multireporter case, the clerk must accept any completed portion  
16 of the transcript from the lead reporter one week after the time  
17 prescribed by (3) even if other portions are uncompleted. The clerk  
18 must promptly pay each reporter who certifies that all portions of the  
19 transcript assigned to that reporter are completed.  
20

21 **(d) Extension of time**  
22

- 23 (1) The superior court may not extend the time for preparing the record.  
24  
25 (2) The reviewing court may order one or more extensions of time for  
26 preparing the record, not exceeding a total of 60 days, on receipt of:  
27  
28 (A) an affidavit showing good cause, and  
29  
30 (B) in the case of a reporter's transcript, certification by the  
31 superior court presiding judge, or a court administrator  
32 designated by the presiding judge, that an extension is  
33 reasonable and necessary in light of the workload of all  
34 reporters in the court.  
35

36 **(e) Sending the transcripts**  
37

- 38 (1) When the clerk's and reporter's transcripts are certified as correct,  
39 the clerk must promptly send the original to the reviewing court and  
40 one copy of each to each defendant's appellate counsel and to the  
41 Attorney General, noting the sending dates on the original and  
42 notifying the district attorney that the prosecution's copy has been  
43 sent to the Attorney General.

(2) If the clerk does not know the identity of the defendant's appellate counsel, the clerk must send that counsel's copy of the transcripts to the reviewing court for forwarding to such counsel.

**(f) Probation officer's report**

The probation officer's report included in the clerk's transcript under rule 31(b) must appear in all copies of the appellate record. The reviewing court's copy of the report must be placed in a sealed envelope marked "Confidential—May Not Be Examined Without Court Order—Probation Officer Report."

**(g) Supervision of preparation of record**

Each Court of Appeal clerk, under the supervision of the administrative presiding justice or the presiding justice, must take all appropriate steps to insure that superior court clerks and reporters promptly perform their duties under this rule. This provision does not affect the superior courts' responsibility for the prompt preparation of appellate records.

**Advisory Committee Comment**

**Subdivision (a).** Revised subdivision (a) is former rule 34.5, implementing Code of Civil Procedure section 269(b). Like the former rule, revised subdivision (a)(2) provides brief guidelines to assist the trial judge in deciding whether an appeal in the case is likely or unlikely. In addition to that provision, the former rule set forth three further guidelines for the same purpose; but because two of these are plainly implied by the remainder of the rule and the third is not a guideline but a statistic, all three are deleted as unnecessary.

**Subdivision (b).** Revised subdivision (b) is derived from former rule 35(a). Former subdivision (a) generally provided that extensions of time to prepare the clerk's transcript were governed by rule 45(c), but former subdivision (d) specifically provided a different procedure for extending *any* rule-preparation time prescribed by the rule. The revised rule removes this inconsistency by providing that extensions of time to prepare the clerk's transcript, like the reporter's transcript (see revised subd. (c)(3)), are governed by subdivision (d).

In a case with more than one appealing defendant, the former rule directed the clerk to prepare an extra copy of the clerk's transcript for each extra defendant; but the rule limited the number of those copies to two regardless of the number of additional defendants, unless one or more of the defendants was sentenced to death. The revised rule deletes that limit in order to conform to current practice, in which a copy of the transcript is typically prepared for each additional appealing defendant represented by separate counsel.

**Subdivision (c).** Revised subdivision (c) is primarily derived from former rule 35(b). The revised subdivision deletes the provision of the former rule that required the clerk to deliver the notification of the filing of the notice of appeal to the reporter "personally or to his or her office or internal mail receptacle" and authorized the clerk to mail the notification if the reporter

1 was not a court employee; the provision was inappropriate micromanagement of the clerk's  
2 office. (For the same reason, revised rule 4 deletes the same provision from the civil appellate  
3 rules.)  
4

5 Paragraphs (3) and (5) of former rule 35(c) contained overlapping and inconsistent  
6 provisions directing that copies of the record be shared in various ways if there were four or more  
7 appealing defendants. Because the revised rule requires that a copy of each transcript be prepared  
8 for *each* additional appealing defendant represented by separate counsel, the former provisions  
9 for sharing copies are deleted as obsolete.  
10

11 **Subdivision (e).** Revised subdivision (e) is derived from former rule 35(c) and (e). Former  
12 rule 35(e) purported to require that the district attorney send to the clerk any copy of the transcript  
13 that the clerk had previously sent to the district attorney at the latter's request (former rule 35(a),  
14 revised rule 32(b)(2)), and that the clerk then send that copy to the Attorney General. Revised  
15 rule 32(e) deletes that requirement for several reasons: it is inconsistent with the purpose of  
16 revised subdivision (b)(2), it is unnecessary because the Attorney General's Office receives its  
17 own copy of the transcript under revised subdivision (e)(1) (former rule 35(c)), and it does not  
18 conform to actual practice.  
19

20 Revised rule 32(e)(2) is new and fills a gap. It is derived from the second sentence of  
21 former rule 33(d), now revised rule 32.1(c).  
22

23 **Former rule 35(e).** Former rule 35(e) provided for the transmission of certain exhibits to  
24 the reviewing court. Revised rule 33.1 now governs all matters relating to the transmission of  
25 exhibits.  
26

27 **Former rule 35(f).** Former rule 35(f) has been moved to revised rule 31(e).

1 **Rule 32.1. Augmenting and correcting the record**

2  
3 **(a) Subsequent trial court orders**

4  
5 If, after the record is certified, the trial court amends or recalls the judgment  
6 or makes any other order in the case, including an order affecting the  
7 sentence or probation, the clerk must promptly certify and send a copy of  
8 the amended abstract of judgment or other order—as an augmentation of  
9 the record—to the reviewing court, the probation officer, the defendant,  
10 appellate counsel, and the Attorney General.

11  
12 **(b) Omissions**

13  
14 If, after the record is certified, the superior court clerk or the reporter learns  
15 that the record omits a document or transcript that any rule requires to be  
16 included, the clerk must promptly copy and certify the document or the  
17 reporter must promptly prepare and certify the transcript. Without the need  
18 for a court order, the clerk must send the document or transcript—as an  
19 augmentation of the record—to the reviewing court, appellate counsel, and  
20 the Attorney General.

21  
22 **(c) Appellate counsel unknown**

23  
24 If the clerk does not know the identity of defendant’s appellate counsel, the  
25 clerk must send any document or transcript added to the record under (a) or  
26 (b) to the reviewing court with a request that it be forwarded to such  
27 counsel.

28  
29 **(d) Augmentation by the reviewing court**

30  
31 At any time, on motion of a party or its own motion, the reviewing court  
32 may order the record augmented or corrected as provided in rule 12.

33  
34 **Advisory Committee Comment**

35  
36 **Subdivision (a).** Revised subdivision (a) combines related provisions of the first  
37 sentence of former rule 33(d) and the last paragraph of former rule 33(e).

38  
39 **Subdivision (b).** Revised subdivision (b) is the third paragraph of former rule 35(e).

40  
41 **Subdivision (c).** Revised subdivision (c) restates the second sentence of former rule  
42 33(d), made applicable to both of the preceding subdivisions in the interest of completeness.

43  
44 **Subdivision (d).** Revised subdivision (d) is new. It is not a substantive change, but is a  
45 cross-reference inserted in this rule to clarify the applicability of rule 12 to criminal appeals.

1 **Rule 32.2 Agreed statement**

2  
3 If the parties present the appeal on an agreed statement they must comply with the  
4 relevant provisions of rule 6, but the appellant must file an original and three  
5 copies of the statement in superior court within 25 days after filing the notice of  
6 appeal.

7  
8 **Advisory Committee Comment**

9  
10 Revised rule 32.2 is former rule 36(a).

1 **Rule 32.3. Settled statement**

2  
3 **(a) Application**

4  
5 As soon as a party learns that any portion of the oral proceedings cannot be  
6 transcribed, the party may serve and file in superior court an application for  
7 permission to prepare a settled statement. The application must explain why  
8 the oral proceedings cannot be transcribed.  
9

10 **(b) Procedure**

11  
12 The judge must rule on the application within five days after it is filed.  
13 If the judge grants the application, the parties must comply with the  
14 relevant provisions of rule 7, but the applicant must deliver a proposed  
15 statement to the judge for settlement within 30 days after it is ordered,  
16 unless the reviewing court extends the time. The applicant must promptly  
17 prepare, serve, and file an original and three copies of the settled statement  
18 in superior court.  
19

20 **Advisory Committee Comment**

21  
22 Revised rule 32.3 is based on former rule 36(b).  
23

24 **Subdivision (a).** Former rule 36(b) authorized only appellants to apply for permission to  
25 prepare a settled statement when a portion of the oral proceedings could not be transcribed.  
26 Revised rule 32.3(a) expands this authority to include any party: no reason appears to deny  
27 respondents the opportunity to seek such relief. The change is substantive.  
28

29 Revised rule 32.3(a) also deletes as an unnecessary formalism the former requirement  
30 that the application be verified, and simplifies the showing the applicant must make.

1 **Rule 33. Briefs**

2  
3 **(a) Contents and form**

4  
5 Except as provided in this rule, briefs in criminal appeals must comply as  
6 nearly as possible with rules 13 and 14.  
7

8 **(b) Length**

9  
10 (1) A brief produced on a computer must not exceed 21,000 words,  
11 including footnotes. Such a brief must include a certificate by  
12 appellate counsel or an unrepresented defendant stating the number  
13 of words in the brief; the person certifying may rely on the word  
14 count of the computer program used to prepare the brief.  
15

16 (2) A typewritten brief must not exceed 75 pages.  
17

18 (3) The tables, a certificate under (1), and any attachment permitted  
19 under rule 14(d) are excluded from the limits stated in (1) or (2).  
20

21 (4) A combined brief in an appeal governed by (e) must not exceed  
22 double the limits stated in (1) or (2).  
23

24 (5) On application, the presiding justice may permit a longer brief for  
25 good cause.  
26

27 **(c) Time to file**

28  
29 (1) An appellant must serve and file its opening brief within 40 days  
30 after the record is filed in the reviewing court.  
31

32 (2) A respondent must serve and file its brief within 30 days after the  
33 appellant files its opening brief.  
34

35 (3) An appellant must serve and file its reply brief, if any, within 20  
36 days after the respondent files its brief.  
37

38 (4) The time to serve and file a brief may not be extended by stipulation,  
39 but only by order of the presiding justice under rule 45.  
40

41 (5) Rule 17 applies if a party fails to timely file an appellant's opening  
42 brief or a respondent's brief, but the period specified in the notice  
43 required by that rule must be 30 days.



1 **(d) Service**

- 2
- 3 (1) Counsel for the defendant must serve each brief for the defendant on
- 4 the Attorney General and the district attorney, and must send a copy
- 5 to the defendant personally unless the defendant requests otherwise
- 6 in writing. Counsel's signed statement that a copy was sent to the
- 7 defendant or that counsel has the defendant's written request that
- 8 copies not be sent to the defendant is sufficient to show compliance
- 9 with this subdivision, and the statement need not include the
- 10 defendant's address.
- 11
- 12 (2) The People must serve two copies of their briefs on appellate
- 13 defense counsel.
- 14
- 15 (3) A copy of each brief must be served on the superior court clerk for
- 16 delivery to the trial judge.
- 17

18 **(e) When a defendant and the People appeal**

19

20 When both a defendant and the People appeal, the defendant must file the

21 first opening brief unless the reviewing court orders otherwise, and rule

22 16(b) governs the contents of the briefs.

23

24 **(f) Amicus curiae briefs**

25

26 Amicus curiae briefs may be filed as provided in rule 13(c).

27

28 **Advisory Committee Comment**

29

30 Revised rule 33 is based on former rule 37.

31

32 **Subdivision (b).** Revised subdivision (b) states the maximum permissible length of a

33 brief produced on a computer in terms of word count rather than page count. This substantive

34 change tracks an identical provision in revised rule 14(c) governing Court of Appeal briefs, and is

35 explained in the Comment to that provision.

36

37 The maximum permissible length of briefs in death penalty appeals is prescribed in

38 revised rule 36.

39

40 **Subdivision (c).** For completeness, revised subdivision (c)(4) adds a cross-reference to

41 the general provision of rule 45 allowing extensions of time to file briefs by order of the presiding

42 justice. The provision tracks an identical provision in the rule governing briefs on the merits in

43 the Supreme Court (former rule 29.3(a), now proposed revised rule 29.1(a)(5), circulated for

44 comment in the Winter 2002 rules cycle).

45

1           **Subdivision (e).** Revised subdivision (e) fills a gap by providing for cases in which both  
2 a defendant and the People appeal. It is derived from rule 16, adapted to criminal appeals.

3  
4           **Subdivision (f).** Revised subdivision (f) is a cross-reference provision added to clarify  
5 the applicability of rule 13(c) to criminal appeals.

1 **Rule 33.1. Transmitting exhibits**

2  
3 Exhibits that were admitted in evidence, refused, or lodged, may be transmitted to  
4 the reviewing court as provided in rule 18.

5  
6 **Advisory Committee Comment**

7  
8 Revised rule 33.1 is a new rule that supersedes scattered and incomplete provisions on  
9 exhibits previously found in former rules 33(a)(3), 33(b)(3), and 35(e). The revised rule  
10 incorporates by reference rule 18, which makes a number of substantive changes explained in the  
11 Comment to that rule.

1 **Rule 33.2. Hearing and decision in the Court of Appeal**

2  
3 Rules 21 through 27 govern the hearing and decision in the Court of Appeal of an  
4 appeal in a noncapital criminal case.

5  
6 **Advisory Committee Comment**

7  
8 Revised rule 33.2 is new, but is not a substantive change. It clarifies the applicability, to  
9 noncapital criminal appeals, of the relevant rules governing the hearing and decision of civil  
10 appeals in the Court of Appeal.

1 **Rule 33.3. Hearing and decision in the Supreme Court**

2  
3 Rules 28 through 29.9 govern the hearing and decision in the Supreme Court of an  
4 appeal in a noncapital criminal case.

5  
6 **Advisory Committee Comment**

7  
8 Revised rule 33.3 is new, but is not a substantive change. It clarifies the applicability, to  
9 noncapital criminal appeals, of the relevant rules governing the hearing and decision of civil  
10 appeals in the Supreme Court.  
11